

AMENDED IN ASSEMBLY MAY 25, 1999  
AMENDED IN ASSEMBLY APRIL 19, 1999  
AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

## ASSEMBLY BILL

**No. 784**

**Introduced by Assembly Member Romero**  
*(Coauthors: Assembly Members Aroner, Davis, Honda,*  
*Jackson, Knox, Longville, and Mazzoni)*

February 24, 1999

---

---

An act to amend Sections ~~14107.2, 14170.8,~~ *14170.8* and 14171.6 of, and to add Sections 14100.75, 14107.7, 14107.9, 14107.10, 14107.11, and 14107.25 to, the Welfare and Institutions Code, relating to Medi-Cal.

### LEGISLATIVE COUNSEL'S DIGEST

AB 784, as amended, Romero. Medi-Cal.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services, pursuant to which medical benefits are provided to public assistance recipients and certain other low-income persons.

Existing law specifies that any Medi-Cal provider of durable medical equipment or incontinence supplies shall provide to the department a bond of not less than \$25,000, but authorizes the provider to seek an exemption from that requirement after continuous operation of 3 years.

This bill would extend those requirements to other providers under the Medi-Cal program, and would require

the department to establish a mechanism to track participation rates to determine if the requirement is a deterrent to Medi-Cal program participation.

~~Existing law specifies that any person who solicits or receives any remuneration in return for the referral, or promised referral, of an individual to a person for the furnishing of Medi-Cal benefits is punishable by upon a first conviction by imprisonment in the county jail for not more than 1 year or state prison, or by a fine, or both imprisonment and fine, and specifies that a second or subsequent conviction shall be punishable by imprisonment in the state prison.~~

~~This bill would specify that any marketing activity intended to cause the referral of an individual from a licensed medical practitioner to a Medi-Cal provider on a per patient or other form of bounty basis is within the scope of that prohibition, thereby revising the definition of a crime, thereby resulting in a state-mandated local program.~~

Existing law provides that the Director of Health Services, may adopt, amend, or repeal, in accordance, such reasonable rules and regulations as may be necessary or proper to carry out the purposes and intent of the Medi-Cal program and to enable it to exercise the powers and perform the duties conferred upon it by law.

Existing regulations require that providers shall meet certain standards for participation in the Medi-Cal program, including the requirement that the provider shall be eligible to, or be certified to, participate in the federal Medicare program.

This bill would revise the standards for provider participation in the Medi-Cal program.

This bill would also require the department to prohibit individuals or entities with a demonstrated history of questionable Medi-Cal billing practices from participating in the Medi-Cal program, and would specify factors the department shall consider in determining if an applicant's practices fall within the parameters of questionable billing practices.

Existing law establishes procedures for seeking approval by the department to participate as a provider in the Medi-Cal program.

This bill would require the department to require disclosure of certain information from applicants for Medi-Cal provider numbers.

The bill would require that all individuals, partnerships, clinics, groups, associations, corporations, or institutions participating in the Medi-Cal program assume financial responsibility for ~~billing irregularities in billing for them, or on their behalf,~~ *medicaid claims that do not comply with law and* that result in overpayments.

Existing law provides that principal labelers and other primary suppliers of goods and services to incontinence supplies providers under the Medi-Cal program maintain accounting records to support the cost of goods and services provided to those providers, subject to audit or examination by the department.

This bill would extend that requirement to ~~principal labelers and other~~ *primary Medi-Cal* suppliers, *as defined*, of goods and services to all providers under the Medi-Cal program.

Existing law requires the Director of Health Services to establish administrative appeal processes to review grievances or complaints arising from the findings of an audit or examination for final settlements.

This bill would revise those procedures to require that collection of overpayments subject to a notice of deficiency by the department shall not be deferred although the provider has submitted a request for an appeal process, if the department determines that fraud or willful misrepresentation was applied in the provision of the goods or services, until the completion of the appeal process except in certain cases of extreme financial hardship.

Existing law requires that a provider of durable medical equipment or incontinence supplies under the Medi-Cal program shall be subject to certain penalties and interest on reimbursements received under the Medi-Cal program to which the provider is not entitled.

This bill would extend those penalty and interest requirements to also apply to any ~~pharmacy, laboratory, primary supplier, or manufacturer under the Medi-Cal program~~ *provider of services, as defined*.

This bill would exempt certain primary care clinics from all the provisions of the bill.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 14100.75 is added to the Welfare  
2 and Institutions Code, to read:

3 14100.75. (a) (1) Any provider of goods or services  
4 shall provide, to the department, a bond, or other security  
5 satisfactory to the department, of an amount determined  
6 by the department, pursuant to regulations adopted by  
7 the department.

8 (2) The department, in determining the amount of  
9 bond or security required by paragraph (1), shall base the  
10 determination on the level of estimated billings, and shall  
11 not be less than twenty-five thousand dollars (\$25,000).

12 (b) (1) After three years of continuous operation as a  
13 provider, a Medi-Cal provider may apply to the  
14 department for an exemption from the requirements of  
15 subdivision (a).

16 (2) The department shall adopt regulations  
17 establishing conditions for the approval or denial of  
18 applications for exemption pursuant to paragraph (1).

19 (c) The department shall establish a mechanism to  
20 track rates of participation among providers who are  
21 subject to the requirement of subdivision (a) to  
22 determine if the requirement is a deterrent to Medi-Cal  
23 program participation among provider applicants.

24 (d) Subdivisions (a) and (b) do not apply to  
25 individuals who are licensed pursuant to Division 2  
26 (commencing with Section 500) of the Business and  
27 Professions Code, or to any clinic licensed pursuant to



subdivision (a) of Section 1204 of the Health and Safety Code.

~~SEC. 2. Section 14107.2 of the Welfare and Institutions Code is amended to read:~~

~~14107.2. (a) Any person who solicits or receives any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind either:~~

~~(1) In return for the referral, or promised referral, of any individual to a person for the furnishing or arranging for the furnishing of any service or merchandise for which payment may be made in whole or in part under this chapter or Chapter 8 (commencing with Section 14200), including any marketing activity intended to cause the referral of an individual from a licensed medical practitioner to a Medi-Cal provider on a per patient or other form of bounty basis; or~~

~~(2) In return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any goods, facility, service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8 (commencing with Section 14200), is punishable upon a first conviction by imprisonment in the county jail for not longer than one year or state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both the imprisonment and fine. A second or subsequent conviction shall be punishable by imprisonment in the state prison.~~

~~(b) Any person who offers or pays any remuneration, including, but not restricted to, any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in valuable consideration of any kind either:~~

~~(1) To refer any individual to a person for the furnishing or arranging for furnishing of any service or merchandise for which payment may be made, in whole or in part, under this chapter or Chapter 8~~

1 ~~(commencing with Section 14200), including any~~  
2 ~~marketing activity to cause the referral of an individual~~  
3 ~~from a licensed medical practitioner to a Medi-Cal~~  
4 ~~provider on a per patient or other form of bounty basis;~~  
5 ~~or~~

6 ~~—(2) To purchase, lease, order, or arrange for or~~  
7 ~~recommmend the purchasing, leasing or ordering of any~~  
8 ~~goods, facility, service or merchandise for which~~  
9 ~~payment may be made in whole or in part under this~~  
10 ~~chapter or Chapter 8 (commencing with Section~~  
11 ~~14200), is punishable upon a first conviction by~~  
12 ~~imprisonment in the county jail for not longer than one~~  
13 ~~year or state prison, or by a fine not exceeding ten~~  
14 ~~thousand dollars (\$10,000), or by both the~~  
15 ~~imprisonment and fine. A second or subsequent~~  
16 ~~conviction shall be punishable by imprisonment in the~~  
17 ~~state prison.~~

18 —

19 ~~(c) Subdivisions (a) and (b) shall not apply to either~~  
20 ~~any of the following:~~

21 ~~(1) Any amount paid by an employer to an employee,~~  
22 ~~who has a bona fide employment relationship with that~~  
23 ~~employer, for employment with provision of covered~~  
24 ~~items or services.~~

25 ~~(2) A discount or other reduction in price obtained by~~  
26 ~~a provider of services or other entity under this chapter~~  
27 ~~or Chapter 8 (commencing with Section 14200), if the~~  
28 ~~reduction in price is properly disclosed and reflected in~~  
29 ~~the costs claimed or charges made by the provider or~~  
30 ~~entity under this chapter or Chapter 8 (commencing~~  
31 ~~with Section 14200). This paragraph shall not apply to~~  
32 ~~consultant pharmaceutical services rendered to nursing~~  
33 ~~facilities nor to all categories of intermediate care~~  
34 ~~facilities for the developmentally disabled.~~

35 ~~(3) Any clinic licensed pursuant to subdivision (a) of~~  
36 ~~Section 1204 of the Health and Safety Code.~~

37 ~~(d) For purposes of this section “kickback” means a~~  
38 ~~rebate or anything of value or advantage, present or~~  
39 ~~prospective, or any promise or undertaking to give any~~  
40 ~~such rebate or thing of value or advantage, with a corrupt~~

~~intent to unlawfully influence the person to whom it is given in actions undertaken by that person in his or her public, professional, or official capacity.~~

~~(e) The enforcement remedies provided under this section are not exclusive and shall not preclude the use of any other criminal or civil remedy.~~

~~SEC. 3.—~~

SEC. 2. Section 14107.7 is added to the Welfare and Institutions Code, to read:

14107.7. (a) The department shall, in consultation with the Controller, the Attorney General, and interested organizations such as the California Medical Association, adopt regulations to preclude individuals with a demonstrated history of questionable Medi-Cal billing practices from obtaining a Medi-Cal provider number.

(b) The department shall, when adopting the regulations required by subdivision (a), consider the following:

(1) The background and qualifications of each applicant and the immediate family and business associates of the applicant, *including, but not limited to, investors, partners, shareholders, and members of the board of directors*, with respect to the type and nature of the medical services to be provided.

(2) Sources of funding for the business of the applicant.

(3) Prior involvement of a participant and the immediate family and business associates of the participant, *including, but not limited to, investors, partners, shareholders, and members of the board of directors*, in any Medi-Cal program or any other related program and the status of all prior or pending audits, audit appeals, and investigations.

(c) The department shall clearly inform an applicant that false disclosure of the required information constitutes grounds for termination of the applicant's status as a provider in the Medi-Cal program and the provider number. The department shall adopt regulations for the termination of an individual's or other

1 entity's provider number for falsifying information on the  
2 required disclosures.

3 (d) This section shall not apply to any clinic licensed  
4 pursuant to subdivision (a) of Section 1204 of the Health  
5 and Safety Code.

6 (e) The department shall implement this section  
7 through the adoption of emergency regulations in  
8 accordance with the Administrative Procedure Act  
9 (Chapter 3.5 (commencing with Section 11340) of Part 1  
10 of Division 3 of Title 2 of the Government Code). The  
11 initial adoption of emergency regulations pursuant to this  
12 section and one readoption of those initial regulations  
13 shall be deemed to be an emergency and necessary for  
14 the immediate preservation of the public peace, health  
15 and safety, or general welfare. Initial emergency  
16 regulations and the first readoption of those regulations  
17 shall be exempt from review by the Office of  
18 Administrative Law. The emergency regulations  
19 authorized by this section and the readoption of those  
20 regulations shall be submitted by the Office of  
21 Administrative Law for filing with the Secretary of State  
22 and publication in the California Code of Regulations and  
23 shall remain in effect for no more than 180 days.

24 ~~SEC. 4.—~~

25 SEC. 3. Section 14107.9 is added to the Welfare and  
26 Institutions Code, to read:

27 14107.9. (a) Any medical professional who is subject  
28 to licensing requirements in the state who is listed as an  
29 owner or operator of any provider of Medi-Cal goods or  
30 services in the acquisition of a Medi-Cal provider number  
31 shall disclose to the department the amount of  
32 operational interest he or she will have in the operation  
33 of the provider.

34 (b) Any medical professional whose medical license is  
35 used in the application of any business for a Medi-Cal  
36 provider number and any other person who has any  
37 ownership interest in the provider shall provide to the  
38 department a signed, written statement assuming  
39 financial responsibility for all ~~Medi-Cal—billing~~  
40 ~~irregularities~~ *medicaid claims that do not comply with*



1 *Medi-Cal statutes and regulations and that result in*  
2 *overpayments.*

3 (c) This section shall not apply to any clinic licensed  
4 pursuant to subdivision (a) of Section 1204 of the Health  
5 and Safety Code.

6 ~~SEC. 5.—~~

7 SEC. 4. Section 14107.10 is added to the Welfare and  
8 Institutions Code, to read:

9 14107.10. Any individual, partnership, clinic, group,  
10 association, corporation, or institution, except a clinic  
11 licensed pursuant to subdivision (a) of Section 1204 of the  
12 Health and Safety Code, participating as a provider of  
13 goods or services in the Medi-Cal program shall assume  
14 financial responsibility for all ~~Medi-Cal—billing~~  
15 ~~irregularities~~ *medicaid claims that do not comply with*  
16 *Medi-Cal statutes and regulations and that result in*  
17 *overpayments.*

18 ~~SEC. 6.—~~

19 SEC. 5. Section 14107.11 is added to the Welfare and  
20 Institutions Code, to read:

21 14107.11. (a) The department shall not defer  
22 collection of any overpayment or withhold payment or  
23 any portion thereof applicable to any goods or services for  
24 which a determination of an overpayment is subject to an  
25 appeal if the department has reliable evidence of fraud  
26 or willful misrepresentation being applied in the  
27 provision of the goods or services until the completion of  
28 the appeal process.

29 (b) The department shall, if it determines that  
30 withholding a payment under subdivision (a) would  
31 result in the provider facing severe financial hardship,  
32 take all necessary steps to accelerate the process of the  
33 appeal.

34 (c) This section shall not apply to any clinic licensed  
35 pursuant to subdivision (a) of Section 1204 of the Health  
36 and Safety Code.

37 ~~SEC. 7.—~~

38 SEC. 6. Section 14107.25 is added to the Welfare and  
39 Institutions Code, to read:

1 14107.25. The department may withhold payment or  
2 suspend or terminate the participation in the Medi-Cal  
3 program of any provider and the entity's Medi-Cal  
4 provider number when an audit, review, or investigation  
5 presents ~~credible~~ *reliable* evidence that a significant  
6 portion of the provider's Medi-Cal billings are generated  
7 through the prohibited referral services specified in  
8 Section 14107.2. This section shall not apply to any clinic  
9 licensed pursuant to subdivision (a) of Section 1204 of the  
10 Health and Safety Code.

11 ~~SEC. 8.—~~

12 *SEC. 7.* Section 14170.8 of the Welfare and Institutions  
13 Code is amended to read:

14 14170.8. (a) Notwithstanding any other provision of  
15 ~~law, principal labelers and any other primary suppliers of~~  
16 ~~goods and services shall maintain accounting records to~~  
17 ~~support the cost of goods and services provided to~~  
18 ~~Medi-Cal providers.~~ *law, every primary supplier of*  
19 *pharmaceuticals or medical equipment, supplies, or*  
20 *services, shall maintain accounting records to*  
21 *demonstrate the manufacture, assembly, purchase, or*  
22 *acquisition and subsequent sale, of any pharmaceuticals*  
23 *or medical equipment, supplies, or services to Medi-Cal*  
24 *providers. Accounting records shall include, but not be*  
25 *limited to, inventory records, general ledgers, financial*  
26 *statements, purchase and sales journals and invoices,*  
27 *prescription records, bills of lading, and delivery records.*  
28 *For purposes of this section the term "primary suppliers"*  
29 *mean any manufacturer, principal labeler, wholesaler,*  
30 *and any other primary supplier.*

31 (b) Accounting records maintained pursuant to  
32 subdivision (a) shall be subject to audit or examination by  
33 the department or the Controller ~~to determine the~~  
34 ~~reasonableness of costs claimed by the providers.~~ *during*  
35 *regular business hours.*

36 (c) This section shall not apply to any clinic licensed  
37 pursuant to subdivision (a) of Section 1204 of the Health  
38 and Safety Code.

39 ~~SEC. 9.—~~

1 SEC. 8. Section 14171.6 of the Welfare and Institutions  
2 Code is amended to read:

3 14171.6. (a) (1) Any provider , as defined in  
4 paragraph (2), that obtains reimbursement under this  
5 chapter to which it is not entitled shall be subject to  
6 interest charges or penalties as specified in this section.

7 (2) For purposes of this section, “provider” means any  
8 ~~provider of durable medical equipment or incontinence~~  
9 ~~supplies, pharmacy, laboratory, or primary supplier,~~  
10 ~~manufacturer, or dealer of supplies other than those~~  
11 ~~supplies specified in Section 14171.6: provider of services,~~  
12 *as defined in subdivision (a) of Section 51051 of Title 22*  
13 *of the California Code of Regulations.*

14 (b) When it is established upon audit that the provider  
15 has claimed payments under this chapter to which it is not  
16 entitled, the provider shall pay, in addition to the amount  
17 improperly received, interest at the rate specified by  
18 subdivision (i) of Section 14171.

19 (c) (1) When it is established upon audit that the  
20 provider claimed payments related to services or costs  
21 that the department had previously notified the provider  
22 in an audit report that the costs or services were not  
23 reimbursable, the provider shall pay, in addition to the  
24 amount improperly claimed, a penalty of 10 percent of  
25 the amount improperly claimed after receipt of the  
26 notice, plus the cost of the audit.

27 (2) In addition to the penalty and costs specified by  
28 paragraph (1), interest shall be assessed at the rate  
29 specified in subdivision (i) of Section 14171.

30 (3) Providers that wish to preserve appeal rights or to  
31 challenge the department’s positions regarding appeal  
32 issues may claim the costs or services and not be  
33 reimbursed therefor if they are identified and presented  
34 separately on the cost report.

35 (d) (1) When it is established that the provider  
36 fraudulently claimed and received payments under this  
37 chapter, the provider shall pay, in addition to the amount  
38 improperly claimed, a penalty of 300 percent of the  
39 amount improperly claimed, plus the cost of the audit.

(2) In addition to the penalty and costs specified by paragraph (1), interest shall be assessed at the rate specified by subdivision (i) of Section 14171.

(3) For purposes of this subdivision, a fraudulent claim is a claim upon which the provider has been convicted of fraud upon the Medi-Cal program.

(e) Nothing in this section shall prevent the imposition of any other civil or criminal penalties to which the provider may be liable.

(f) Any appeal to any action taken pursuant to subdivision (b), (c), or (d) is subject to the administrative appeals process provided by Section 14171.

(g) As used in this section, “cost of the audit” includes actual hourly wages, travel, and incidental expenses at rates allowable by rules adopted by the State Board of Control and applicable overhead costs that are incurred by employees of the state in administering this chapter with respect to the performance of audits.

(h) This section shall not apply to any clinic licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code.

~~SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~